**Fabricating Engineers, Inc. *and* Local 708, International Union, United Automobile, Aerospace and Agricultural Implement Workers of america, (UAW) AFL–CIO.** Case 7–CA–46433

January 26, 2004

## DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on July 22 and October 14, 2003, respectively, the General Counsel issued the complaint on October 23, 2003, against Fabricating Engineers, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On December 5, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On December 10, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by November 6, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 13, 2003, notified the Respondent that unless an answer was received by November 20, 2003, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a corporation, with offices and places of business in Davisburg and Flint, Michigan (the Michigan facilities), has been engaged in the manufacture and nonretail sale of conveyor systems.

During calendar year 2002, a representative period, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Michigan facilities goods valued in excess of $50,000 directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 708, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Cooper has held the position of president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The employees described in Exhibit A of the current collective-bargaining agreement constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since at least 1975, and at all material times, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 1, 2002, through April 30, 2005.

At all times since at least 1975, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit.

At all times material, the International Union has assigned its representative responsibilities with respect to the unit to the Charging Union.

Since about April 2003, the Respondent, at its Michigan facilities, failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to remit to the Charging Union dues deducted from employees' paychecks.

Since about April 2003 the Respondent, at its Michigan facilities, failed to continue in effect all the terms and

conditions of the collective-bargaining agreement by failing to contribute money owed to its employees' pension fund.

The Respondent engaged in the conduct described above without the Charging Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

Since about June 26, 2003, the Respondent has failed to bargain collectively and in good faith with the Charging Union over the effects of the closing of its Michigan facilities by, inter alia, failing to give adequate notice to the Charging Union of its decision to close the Michigan facilities.

## CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its Michigan facilities, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified in *Melody Toyota*, 325 NLRB 846 (1998).[1]

Thus, the Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its Michigan facilities on its unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date of the closure of the Michigan facilities to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) since April 2003, by failing and refusing to continue in effect all the terms and conditions of the current collective-bargaining agreement by failing to remit to the Union dues deducted from the paychecks of employees in the unit, we shall order the Respondent to forward such withheld dues to the Union as required by the collective-bargaining agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) since April 2003, by failing and

[1] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion are less than clear with respect to whether the Respondent implemented the decision to close its Michigan facilities or laid off the employees. Thus, we do not know whether, or to what extent, the refusal to bargain about effects had an impact on employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving & Belting*, 340 NLRB No. 80 (2003); and *ACS Acquisition Corp*., 339 NLRB No. 86 (2003).

refusing to continue in effect all the terms and conditions of the current collective-bargaining agreement by failing to contribute money owed to its employees' pension fund, we shall order the Respondent to make all contractually required pension fund contributions that have not been made since that date, including any additional amounts due the fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).[2] The Respondent shall also be required to reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, because the Respondent's Michigan facilities have apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent at its Michigan facilities at any time since April 1, 2003, in order to inform them of the outcome of this proceeding.

## ORDER

The National Labor Relations Board orders that the Respondent, Fabricating Engineers, Inc., Davisburg and Flint, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 708, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, concerning the effects on the unit employees of its decision to close its Michigan facilities. The unit is as described in Exhibit A of the most recent collective-bargaining agreement, effective May 1, 2002, through April 30, 2005.

(b) Failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to transmit dues deducted from employee paychecks to the Union, and by failing to make pension fund contributions, as required by the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the Respondent's decision to close its Michigan facilities, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision.

(c) Remit to the Union the dues that have been deducted from employees' paychecks since April 2003, in accordance with the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(d) Make all required contributions to the pension fund that have not been made since April 2003, and reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[3] to the Union and all unit employees who were employed by the Respondent at the time since April 1, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 26, 2004

Robert J. Battista, Chairman

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 708, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, concerning the effects on the unit employees of our decision to close our Michigan facilities. The unit is as described in Exhibit A of the most recent collective-bargaining agreement, effective May 1, 2002, through April 30, 2005.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to transmit dues deducted from employee paychecks to the Union, and by failing to make pension fund contributions, as required by the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on unit employees of our decision to close our Michigan facilities, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Michigan facilities, as required by the Decision and Order of the National Labor Relations Board.

WE WILL remit to the Union the dues that we have deducted from unit employees' paychecks since April 2003, in accordance with the collective-bargaining agreement, with interest.

WE WILL make all required contributions to the pension fund that have not been made since April 2003, and WE WILL reimburse the unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

FABRICATING ENGINEERS, INC.